IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5654 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

WAGHAJIBHAI ARJANBHAI DESAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5654 of 2004

MR MM TIRMIZI for Petitioner No. 1

MR SP HASURKAR, AGP Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/01/2005

ORAL JUDGEMENT

Rule. Mr.S.P.Hasurkar, learned AGP waives

service of notice of rule on behalf of the respondents. At the joint request of the learned advocates appearing for the parties, the petition is taken up for final disposal today.

2. In this petition, the petitioner has challenged his transfer order dated 23rd February 2004 by which he has been transferred from Mehsana District to Sabarkantha District. The petitioner is working as unarmed Police constable.

2.1 It is not the case of the petitioner that his transfer from one district to another district is not permissible under the rules. His transfer liability, therefore, is not in doubt.

2.2 The transfer order is, however, challenged mainly on two grounds. Firstly, it is contended that normally, inter district transfer is not resorted to in case of Class III employees. Relying on certain provisions of the Gujarat Police Manual, it is contended that though the IGP has power to transfer the petitioner from one District to another, such transfer should not ordinarily be resorted to. It is further contended that the guidelines provided in Gujarat Police Manual require that frequent transfer should not be made and ordinarily a person should be permitted to be continued at the same station for at least five years. Thus the first limb of the argument is that the order of transfer is contrary to the Government guidelines.

2.3 Second contention of the petitioner is that the impugned transfer order is passed malafide. It is contended that the petitioner had made certain allegations in the past against members of the Police force which displeased the concerned officers. It is on account of the pressure exerted by these officers that the petitioner came to be transfered. It is contended that the order of transfer, therefore, being malafide should be quashed and set aside.

3. In so far as the first contention is concerned, it can be seen, at the outset, that the allegations at its very best amount to violation of certain guidelines. The guidelines provide that as far as possible, transfer should not be made before five years. Obviously, this is not an inviolable rule and for valid reasons, the competent authority is well within its power to pass orders in the interest of administration.

3.1 In the case of Shilpi Bose v. State of Bihar,

AIR 1991 SC 532, the Hon'ble Supreme Court observed that the Court should not interfere with transfer orders which are made in public interest and for administrative reasons unless transfers are made in violation of any mandatory statutory rules or on the ground of malafide.

3.2 In the case of State of Punjab v. Joginder Singh Dhatt, AIR 1993 SC 2486, the Hon'ble Supreme Court observed that the Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It was further observed that it is entirely for the employer to decide when and where and at what point of time a public servant is to be transferred and ordinarily the courts have no jurisdiction to interfere with the order of transfer.

3.3 In the decision of Union of India v. S.L.Abbas, AIR 1993 SC 2444, the Hon'ble Supreme observed that who should be transferred where is a matter for the appropriate authority to decide and unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. It was, therefore, observed that while ordering the transfer, the authority must keeping in mind the guidelines issued by the Government on the subject but the guidelines, however, do not confer upon the Government employee any legally enforceable right.

4. In view of the above legal proposition, it is difficult to uphold the contention of the petitioner that the order of transfer should be set aside only on the ground that some Government guidelines which are otherwise also not inviolable as mentioned above have not been adhered to. In the affidavit in reply filed by the respondents, it has been stated that the transfer of the petitioner was necessary in the public interest and that the same is not penal in nature. In view of this position, the first contention of the petitioner is rejected.

5. With regard to the second contention, viz., that of the transfer order being malafide, it can be noted that the petitioner has not joined any officers by name in their personal capacity. On this ground alone, it would not be possible to inquire into the allegations of malafides. In the case of State of Bihar v. P.P.Sharma, AIR 1991 SC 1260, in para 55, the Hon'ble Supreme Court observed that it is a settled law that the person against whom malafides or bias was imputed should be impleaded as party respondent to the proceedings and given an

opportunity to meet those allegations. In his or her absence, no inquiry into those allegations would be made. Otherwise, it itself is violative of principles of natural justice as it amounts to condemning a person without an opportunity.

6. Even otherwise, it is not possible to conclude that the petitioner has succeeded in proving the malafides against the respondents in passing the order on the available material on record. In the decision of M.Sankaranarayanan, IAS v. State of Karnataka, the Hon'ble Supreme Court observed in para 12 that it may not always be possible to demonstrate malice in fact with full and elaborate particulars and it may be permissible in an appropriate case to draw reasonable inference of mala fide from the facts pleaded and established. But such inference must be based on factual matrix and such factual matrix cannot remain in the realm of insinuation, surmise or conjecture. In the case of State of U.P. v. Gobarddhan Lal, 2004 AIR SCW 2082, the Hon'ble Supreme Court observed that even administrative guidelines for regulating transfers at best may afford an opportunity to the officer or the servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer or servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. It was further observed that the Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless, are shown to be violated by malafides or is made in violation of any statutory provision. It was further observed that the challenge to order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders. It was further observed that the Court or the Tribunal cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could normally be made with order of transfer.

7. On the basis of the above principles, if one examines the allegations of malafides on record, it is not possible to hold that the petitioner has succeeded in establishing that the order of transfer was actuated by malafides. In the affidavit in reply, the allegations of malafides have been denied. No link is established between the officers who are alleged to have been enraged on account of the petitioner's complaint and the Inspector General of Police who is the competent authority and who has passed the order of transfer. Even if it is believed for a moment that the frequent complaints of the petitioner displeased some of the police officials, it is difficult to believe as to why the Inspector General of Police would be a privy to siding one side or the other and transfer the petitioner otherwise than in public interest. No allegations have been made on this count. It may also be noted that the first of the complaints made by the petitioner was in the year 1994 and the second complaint in the year 1995. It is, therefore, difficult to envisage that the petitioner is being transferred on the premise of these complaints after nearly 10 years. It was only the third complaint referred to in the petition which was filed in the year 2003. However, as mentioned above, it is not possible to link the transfer orders of the petitioner with the filing of the complaints. The petitioner has not led any foundation for this Court to come to the conclusion that the reason for his transfer was the complaints that he made. In this view of the matter, the allegations of malafides cannot be accepted.

8. Both the contentions of the petitioner having been turned down, the petition is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

(vjn)